

CDCR Valdivia Monitoring Report

Deuel Vocational Institution

2009-1st Quarter



**CALIFORNIA DEPARTMENT OF CORRECTIONS
AND REHABILITATION**



**VALDIVIA MONITORING TOUR
Deuel Vocational Institution**



Final Report to Task Force

Submitted by the

OFFICE OF COURT COMPLIANCE

February 10, 2009

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VALDIVIA/ARMSTRONG TOUR REPORT

Deuel Vocational Institution

1st Quarter 2009

January 13 – 14, 2009

I. EXECUTIVE SUMMARY

A) Purpose of the Tour

The Office of Court Compliance (OCC) observed parole revocation proceedings at the Deuel Vocational Institution (DVI), and met with California Department of Corrections and Rehabilitation (CDCR) and California Parolee Advocacy Program (CalPAP) staff. The OCC also toured the Modesto 1 & 2 parole units. The purpose of the tour was to evaluate CDCR's compliance with the requirements of the *Valdivia* Permanent Injunction, the *Valdivia* Remedial Plan, and current departmental policy and procedure pertaining to parole revocation.

B) Administration of the Tour

The monitoring group observed the following processes:

Revocation:

- 5 Notice of Rights/Charges,
- 15 Probable Cause Hearings, and
- 0 Revocation Hearings.

The monitoring group also reviewed the following documents/revocation packets:

- 100 revocation packets, *See Exhibit 1-A, Tour Summary Spreadsheet*

C) Proposed Corrective Action Plan:

The Office of Court Compliance has identified items in need of corrective action(s) for any deficiency associated with the *Valdivia* procedures/process where the compliance rate was determined to be less than 90%. The Office of Court Compliance will allow each applicable division to develop the corrective action they deem most appropriate for remedying the compliance deficiencies identified in this report. However, the Office of Court Compliance is always available to provide input and suggestions to the affected divisions in order to develop efficient corrective action and any necessary policy changes. A Corrective Action Plan is attached to this report for divisional review and action.

D) Failure of Plaintiffs' Counsel to Issue Monitoring Reports

The OCC reviews the most recent monitoring reports (both plaintiffs' reports and self-monitoring reports) in preparation for the tour in order to better assess the current state of compliance, spot areas that have previously been identified as problematic to allow the OCC to dedicate specific attention to follow-up on those issues, and to discuss improvements in compliance since the last monitoring tour report issued. Plaintiffs' counsel conducted monitoring tours at DVI in July and December 2008 but has not issued reports. Therefore, the OCC is unable to take any of plaintiffs' comments or concerns into consideration in this report.

II. Probable Cause Determination

The monitors reviewed 100 cases prior to the tour to measure the timeliness of the probable cause determination (PCD). Two revocation packets did not contain the CDCR 1502-B. **(Exhibit 1-B)**. A timely probable cause determination was completed in 95/98 reviewable cases **(97%)**. **(Exhibit 1-A)**.

Modesto Parole Unit 1 and 2 Interview

Both Unit Supervisors (US) and a Parole Agent from the Modesto 1 and 2 parole unit were interviewed during the tour. There were no reported issues or concerns with the unit's ability to complete a timely probable cause determination. This is supported by the RSTS "Closed Case Summary – Valdivia Timeliness Rules" report which reveals 98% compliance at the Modesto 1 unit and 100% compliance at the Modesto 2 unit for the month of December 2008. **(Exhibit 2)**.

The Unit Supervisors both reported they conduct a case conference with the agent for each new arrest via telephone or in person. The conference includes a discussion of the violation to ensure the CDCR 1502-B contains the required factual information for each alleged violation and if a placement in a remedial sanction program would be an option in lieu of a return to custody. The agent reported they are required to review the field file to include all known or unresolved violations; additionally, the US will conduct a second review ensuring all charges are included on the CDCR1502-B.

Review of the revocation documents

A review of the revocation packets revealed the following pertinent compliance deficiencies:

- 26/98 (27%) 1502-Bs reviewed prior to the tour failed to meet the requirement to provide a short factual summary of the charged conduct for each alleged charge. **(Exhibits 1-B and 3)**. See Section III below for more discussion regarding the factual content required on the 1502-B.

III. Notice of Rights/Charges

Timeliness of Notice

92/100 notices analyzed prior to the tour occurred no later than three business days after the parole hold was placed. **(Exhibit 1-A)**. The late cases averaged 2.2 days late. *Id.* Additionally, five notices were observed during the tour and all were timely. Therefore, 97/105 total notices were timely **(92%)**.

Supervising Notice Agent Interview

The Supervising Notice Agent (SNA) reported he has three FUNA/DRUNA vacancies. In order to meet the *Valdivia* timeframes, notice agents have been assigned additional geographical areas left uncovered by the vacancies and are working diligently to meet the mandated timeframes. The SNA stated he regularly reviews the notice logs and RSTS reports to identify problems with late or missed notices and will follow-up with staff and parole units when deficiencies are identified.

Region I and DVI have been the main hub for receiving parolees returned to California through extradition. The SNA has been instrumental in streamlining the notice process for extradition

cases in the Region 1 North area. For example, he placed an additional notice agent at the Sacramento Main Jail, where all northern extradition parolees are initially received, who is able to assist in completing notices before the parolee is transported to a CDCR institution. The current process appears to be effective in attaining timeliness compliance for extradition cases as noted in the DVI Tour Summary, only 1/19 extradition cases analyzed prior to the tour was late at the NOR step. **(Exhibit 1-A).**

Preparation and Method of Notice

The DRUNA followed current departmental policies and procedures in preparing his cases for notice.

The DRUNAs are very conscientious in their attempts to utilize the best available location to conduct the notices at DVI in a way that facilitates effective communication. Notices are usually conducted in the notice agents' private office. However, if the institution is on lockdown they will use a continuum of locations as the situation and institutional security allow.

DVI was on lockdown during the tour and inmate movement was limited. Monitors observed notices conducted in the attorney booths and in the dining area within the housing units. Both notice agents conducted thorough and complete ADA reviews. Additional information self-identified by the parolee during the notice was documented on the 1073, which was reviewed twice to ensure accuracy. The BPT 1100 was read verbatim, the BPT 1100B was explained and the CDCR 1502-B was reviewed with each parolee. Parolees with sensitive information (PC 290) on their 1502-Bs were asked if they wanted to take the 1502-B with them; one parolee did not want to take his 1502-B due to the nature of the charges listed on the form.

The DRUNAs at DVI regularly review RSTS to keep track of parolees who transfer into DVI from other locations before their notice could be completed. DVI receives a lot of extradition cases and transfers from county jails so the notice paperwork does not always keep up with the parolee. Therefore, to decrease the possibility of serving a parolee notice twice, and to ensure that new arrivals receive notice, the notice agents review DEC and RSTS as they prepare the notice documents to determine whether the parolee was ever served.

A review of the revocation packets prior to the tour revealed 3 cases in which Section II of the BPT 1073 in DEC had no boxes marked indicating if the parolee requested an accommodation during his/her parole proceeding. And in one case Section III of the BPT 1073 in DEC was not marked indicating whether or not the parolee appeared to understand the Notice of Rights/Charges. **(Exhibit 1-B & 4).**

Adequate statement of facts on the CDCR 1502-B

Minimum due process, as defined in *Morrissey*, requires the parolee be provided written notice of the claimed violation of parole and the *Valdivia* Permanent Injunction requires the parolee be given **“actual notice of the alleged parole violation, including a short factual summary of the charge conduct.”** The CDCR 1502-B is the document used to serve the parolee notice of the alleged violations and should therefore place them on alert to the conduct that is alleged to have constituted a violation of parole.

Officers from outside law enforcement agencies do not provide the details of most arrests prior to completion and submission of their arrest report. Therefore, the parole agent does not know the facts to support the alleged violations until the arresting officer generates the police report. CDCR maintains that stating the information provided by the arresting law enforcement agency, including the name of the arresting agency and charge(s) the parolee was reportedly arrested for, is sufficient until the final police report is made available to the parole agent.

In those instances where DAPO initiates the arrest, or the facts underlying the arrest are known to the parole agent, a short factual summary of the charged conduct, including a summary of the parolee behavior and/or evidence leading to the violation charge(s), should be included on the CDCR 1502-B (rather than a minimal recitation of the charges themselves). For example, if a parolee is arrested by law enforcement on a Parolee at Large (PAL) warrant, the parole agent should indicate on the 1502-B the facts that support the absconding charge. The short factual summary might read that the agent attempted a home visit and left a card with reporting instructions, but the parolee did not report, and contacted family members living at the parolees ROR who indicated that they have not seen the parolee for weeks. Such language provides a factual basis for the charge. It is insufficient if the parole agent simply indicates the parolee was arrested on a PAL warrant. The parolee behavior that gives rise to issuance of the PAL warrant is the critical component of the required factual summary. A short factual summary of the charged conduct is necessary to serve the parolee notice of the alleged violations and allow him/her to know the facts that supported placement of the parole hold and begin formulating a defense. This is required by the Permanent Injunction.

In 26/98 cases (27%) reviewed prior to the tour, the CDCR 1502-B failed to meet the Injunction’s requirement to provide a short factual summary of each charged conduct at the time the CDCR 1502-B was generated. (**Exhibits 1-B and 3**). The OCC continues to see this issue at most locations in the state.

Charges Added After Notice

There were 29/98 cases reviewed prior to the tour in which charges were added after the parolee was noticed. There were 15 cases (50%) in which investigation revealed the parole agent had, or should have had, information to support the additional charge(s) at the time the 1502-B was authored. In 14 cases investigation revealed that the parole agent did not have knowledge of the charge(s) when writing the 1502-B, justifying the additional charge(s) on the CDCR 1676 when written. The chart below is a summary of the cases where charges were known, or could have been known, at the time the 1502-B was completed:

Parolee Name/CDC #	Charges Added to Violation Report after Parolee Served Notice	Charges Known or Knowable
Baggett (G13022)	<ol style="list-style-type: none"> 1. Use of methamphetamine 2. Failure to follow instruction 3. Failure to attend POC 	<ol style="list-style-type: none"> 1. AOR cites in violation report that lab results were returned a month prior to arrest. 2. Verification of STAR attendance could have easily been determined at the time the 1502-B was authored. 3. Documented missed POC appointments were prior to arrest and therefore known.
Canales (V88573)	<ol style="list-style-type: none"> 1. False ID to a PO 	Arrest involved Stockton’s Parole PACT Team.

	2. Possession of drug paraphernalia	AOR should have been aware of all violations at the time the hold was placed and the 1502-B was generated.
Gomez (V90974)	1. Use of methamphetamine	The AOR stated on the violation report that he received documentation that P had been terminated from program for use of methamphetamine and then issued a miscellaneous decision for a PAL Warrant. The AOR was aware of the reason for the termination of the program and the violation should have been included on the 1502-B.
Goodwin (H56383)	1. Change of residence w/o notice	AOR cites in the violation report that he was assigned the case in October and determined P was not residing at his ROR, prior to the parolee's arrest.
Holt (T34781)	1. Use of cocaine 2. Failure to attend PCO	1. AOR cites in the violation report that ANT results received on 8/7/08 proved positive for use of cocaine. The AOR knew about the positive test result prior to the 11/8/08 arrest. 2. Client Case Notes indicated the AOR was notified of the missed 8/12/08 POC appointment. Both charges were known at the time the 1502-B was authored and should be included.
Johns (P07471)	1. Absconding	The absconding violation is discussed in the narrative of the CDCR 1502-B but is not a listed charge. The AOR had knowledge of this charge at the time the report was written but did not include it as one of the charges on the 1502-B.
Kirby (F77714)	1. Travel beyond 50 miles	The parolee was arrested in Indiana on a PAL warrant. Although the CDCR 1502-B was authored by another agent the PAL warrant should have indicated the parolee did not have permission from the AOR to travel to Indiana. Therefore, the additional violation should have been included on the 1502-B at the time it was written.
Lynch (V01830)	1. Travel over 50 miles 2. Failure to participate in batter's program	1. The parolee was arrested in Texas on a PAL warrant and it was therefore apparent he had traveled more than 50 miles from his county of residence. 2. The parolee's SCOP was signed in 2004- a review of the file at the time the 1502-B was written would have revealed the parolee had not completed the program. Both charges were knowable to the agent at the time the CDCR 1502-B was authored and should have been included.
McDonald (V45136)	1. Use of cocaine	The AOR states in the 1502-B that ANT results <i>received prior to the arrest</i> proved positive for use of cocaine. The AOR had knowledge of this charge at the time the 1502-B was authored but did not include it as one of the charges.
Mulford (V82655)	1. Leaving county w/o AOR permission	Arrest location was outside of the parolee's county of residence and it was therefore known that the parolee left hi county. Additionally, the Unit Supervisor noted on the 1502-B that AOR was to add the violation as a charge. Obviously, this information was known at the time the 1502-B was generated and should have been included.
Phan (V77266)	1. Failure to attend Prop 36	Parolee absconded in January 2008 and was arrested

	<ol style="list-style-type: none"> 2. Failure to attend STAR program 3. Brandishing a deadly weapon 4. Battery w/o serious injury 5. Traveling beyond 50 miles w/o approval 6. Use of Methamphetamine 	in Tennessee in November 2008. A review of the file at the time the 1502-B was authored should have revealed the parolee had not attended prop. 36 or the STAR program, as well as a positive lab result for methamphetamine dated 1/21/08. AOR was also aware of the incident that led to the deadly weapon and battery charge as it happened in January 2008.
Schaffer (V97547)	<ol style="list-style-type: none"> 1. Use of cocaine 	The lab results indicating positive results for use of cocaine were returned on 8/7/08. AOR therefore knew about the positive test results prior to the 11/10/08 arrest but the charge was not included on the 1502-B at the time it was authored.
Sizuela (G08475)	<ol style="list-style-type: none"> 1. Failure to anti-narcotic test for 120 days 	The SCOP for anti-narcotic testing was imposed at the same time the order to attend prop. 36 was issued by BPH. AOR should have known of the additional SCOP as well as the parolee's failure to test, prior to the current arrest.
Ulrey (F34141)	<ol style="list-style-type: none"> 1. Use of alcohol 	Prior to the parolee's arrest on 11/4/08, he signed a statement of admission to the use of alcohol charge on 10/31/08.
Visser (F84518)	<ol style="list-style-type: none"> 1. Failure to report to P&CSD 	Parolee was arrested on a PAL, AOR was aware the parolee had not been reporting to DAPO at the time the 1502-B was generated.

IV. Unit Supervisor Review of Violation Report

A timely Unit Supervisor (US) review of the violation report was conducted in 98/100 revocation packets reviewed prior to the tour (98%). **(Exhibit 1-A)**. The December 2008 RSTS "Closed Case Summary -Valdivia Timeliness Rules" report reflects that 100% of US reviews were timely at the Modesto 1 unit and that 98% were timely at the Modesto 2 unit.

Interview with Unit Supervisors

Both Unit Supervisors reported they do not have any issues or concerns with meeting the mandated *Valdivia* timeframes at this step.

Both Unit Supervisors stated the field agents will complete a case review for criteria mandating a priority designation and will stamp the CDC 1676 if the criteria are met. The Unit Supervisors also complete a second review for priority criteria. Of the 44 cases reviewed prior to the tour that met the criteria for priority designation, the parole agent or Unit Supervisor did not designate "Priority" on the first page of the CDC 1676, as required by DAPO policy, in 32 cases (73%). **(Exhibit 1-B and 5)**. A memorandum dated May 17, 2005, entitled "Processing of revocation Cases Related to Penal Code Sections 1192.7(c), 667.5, and 290," sent to all DAPO staff, states that the agent of record shall review the available documents to determine if the case meets the priority criteria, which are specifically spelled out in the memorandum. The agent is then directed to stamp or write "PRIORITY" on the top of the first page of the report for any case meeting the priority criteria before submitting the report to the Unit Supervisor for review. It should be noted only three cases from the Modesto parole unit were identified as deficient.

Review of the revocation documents

- Arrests and convictions noted together on the CDCR 1521-B:
 - 9/100 (9%) CDCR 1521-Bs reviewed prior to the tour included prior arrest and convictions together in a way that made it impossible to differentiate the two. **(Exhibits 1-B and 6)**. This is problematic because the last DVI self-monitoring report noted that only four cases were deficient in this regard. DAPO provided training on this issue for all field agents in 2008 directing that they differentiate arrests from convictions on the 1521-B.
- Inclusion of CDC 1515 in the revocation packet when the parolee is charged with violating a special condition of parole:
 - There were 31 cases reviewed prior to this tour in which the parolee was charged with violating a special condition of parole. The CDC 1515 was not included as supporting evidence (verifying existence of the special condition) in three revocation packets (10%). **(Exhibit 1-B)**.

V. Parole Administrator Review

Nineteen cases reviewed prior to the tour were extradition and a Parole Administrator (Par Ad) review was not required. However, a Par Ad did complete a review for three extradition cases. A timely review occurred in 77/79 (97%) total cases. **(Exhibit 7)**. The two late cases averaged one day late. *Id.* Five cases that were not extradition, and therefore required a Par Ad review, did not receive a Par Ad review for unknown reasons.

The Par Ad reported only one problem in that parole agents continue to include arrests and convictions together on the Violation Report, making it difficult for her to determine whether a parolee meets the “Priority” designation criteria or is eligible for a remedial sanction.

Review of the revocation documents

A review of the revocation packets analyzed prior to the tour revealed the following compliance deficiency:

- Of the 44 cases that met the criteria for “Priority” designation, the Parole Administrator did not create a “Priority” designation in RSTS, as required by DAPO policy, in 11 cases (25%). A memorandum dated May 17, 2005, entitled “Processing of revocation Cases Related to Penal Code Sections 1192.7(c), 667.5, and 290,” sent to all DAPO staff, requires that the Par Ad review cases for priority designation as a safeguard to the possibility that critical factors might have been overlooked by field units and ensure they are appropriately labeled. **(Exhibit 1-B & 8)**
- In 5 cases (5%) the Parole Administrator did not document their review in RSTS. **(Exhibit 7 & 8)**

VI. Return to Custody Assessment

A review of 100 cases analyzed prior to the tour reveals that 92/100 Return to Custody Assessments (RTCA) (92%) were timely. According to RSTS, 95% of RTCAs completed at the DVI DUR were timely for the month of December 2008. **(Exhibit 9)**. Staff reported only one issue with respect to the RTCA. Specifically, Deputy Commissioners who review the case at

this step will sometimes note a parolee's CCCMS or EOP status but nonetheless make a recommendation to send the parolee to the *jail* ICDTP. This is not a proper recommendation because the jail-based programs in the area do not accept such parolees. A proper recommendation for such parolees would be to the *community* ICDTP, which has providers that are better suited to handle mental health and medication needs.

The monitors observed the completion of several RTCAs during the tour and the requirements for completion were adhered to, including a review and recommendation for remedial sanctions.

Review of the revocation documents

A review of the revocation packets revealed the following compliance deficiencies:

- There was only one case in which the DC did not document the consideration of remedial sanctions in RSTS at the RTCA step. (**Exhibits 1-B and 10**).

VII. Appointment of Counsel

Timely Appointment of Counsel

BPH staff entered information into RSTS to show when the revocation packets were made available to CalPAP in only 13/100 cases reviewed prior to the tour (via the RSTS packet tracking feature). The Associate Chief Deputy Commissioner researched this following the tour and determined that the issue revolved around a lack of training for new staff and a lack of cross-training for staff that complete this function on a substitute basis. The DRU's Office Services Manager will ensure that all staff is trained on the use of the packet tracking feature, that identified staff is specifically assigned the task of completing this portion of RSTS, and that all staff is comfortable completing this RSTS component on a substitute basis, when needed. The OCC will follow-up on this issue to ensure that the training occurred and that the packet tracking feature is used in the future.

Counsel was appointed timely in 12/13 reviewable cases (99%), a 1% increase in timeliness since the last self-monitoring tour. According to CalPAP's November 2008 "Date Case Assigned Compliance Report," 94.75% of cases assigned to the Tracy office were assigned in a timely manner. (**Exhibit 1-C**). CalPAP's monthly data also supports an argument of consistent compliance with this component of the Injunction. CalPAP's monthly data reports timely attorney assignments in 90.58-95.83% of cases between June and December 2008.

CalPAP Interviews

The monitors corresponded with the Tracy CalPAP staff attorney to learn about compliance or process issues at DVI. The staff attorney reported only one issue, specific to extradition cases. According to CalPAP there has been a recent increase in the number of extradition cases that are assigned to the Tracy CalPAP, and an attorney is appointed, then the parolee is transferred to another institution before the attorney consultation or probable cause hearing. This results in dual attorney appointments, additional payment for legal representations, and creates logistical problems for both DRU and CalPAP staff.

VIII. Effective Communication and Effective Communication with Appointed Counsel

Missing BPT 1073s and/or Source Documents

The BPH 1073 was included in all 100 revocation packets reviewed prior to the tour. Eighteen 1073s identified a disability and referenced a verifying source document in Section I. Of those, the source document was included in 13 packets (72%). According to CalPAP's November 2008 "Cases Missing 1073 & Source Documents Monthly Report," 99% of assigned cases included the 1073 in the attorney's copy. **(Exhibit 1-C)**. Of those assigned cases that required an identifying source document, all packets contained the necessary source document (100%). *Id.* This is an impressive compliance statistic.

Disabilities and Effective Communication System (DEC)

BPH- All three DCs were observed reviewing DEC prior to the hearings and all updated Section V of the BPH 1073 in DEC at the conclusion of the proceeding. There were no issues reported with the accessibility or ability to use DEC.

DAPO- The DRUNAs use DEC as required by current policy and procedures. They did not report any issues or concerns.

Sign Language Interpreters

BPH- DRU staff was able to articulate the proper procedure for securing a sign language interpreter for a parole proceeding. CIW has an on-site sign language interpreter who can be used to facilitate interpretive services. In the event the interpreter is not available for the proceeding, the BPH can utilize The Language People, whose contact also includes the ability to provide sign language services. The Office Services Manager I reported that BPH has not had to use The Language People in this context very often but that interpreters have appeared as scheduled, when needed.

DAPO- A sign language interpreter was not required during the monitoring tour. DVI has a designated sign language interpreter on-site and the DRUNA reported he has the necessary contact information when the need arises.

Foreign Language/CyraCom/Language People

BPH- The monitors did not observe the use of the Language People translation services. Staff reported that the transition from CyraCom to Language People was smooth. The hearing rooms were stocked with telephones to facilitate interpretive services.

DAPO- The DRUNA report he is using the new translation service and reported no issues or concerns.

ADA Accommodations Available

BPH- Accommodations, including page magnifiers, hearings amplifiers, and wheelchairs, were available for use in the hearing rooms. Several parolees were escorted in wheelchairs. For example, parolee Rogers (F71067) generally uses a cane. However, he was provided a wheelchair and Correctional Officer escort to and from the hearing room. Parolee Williams (P9044) needs glasses to read and a magnifier was made available for his use throughout his

probable cause hearing. Two other parolees needed glasses to read but both had their own glasses with them.

DAPO- DRUNA(s) have been assigned the required ADA equipment and carried the equipment with them during the observed notices.

Section IV of BPT 1073

In 8/100 cases (8%), DRU staff did not complete Section IV of the BPH 1073 in DEC as required by BPH policy and procedure. (**Exhibit 1-B & 4**) Section IV is designed to indicate what accommodation(s) the parolee will need during the revocation process (specifically the probable cause and revocation hearings) to ensure that the accommodation is made available in advance of the hearing.

IX. Probable Cause Hearing

The monitoring group reviewed 99 cases prior to the tour that proceeded to a probable cause hearing (PCH) and 95 of them were timely. (**Exhibit 1-A**). The late cases averaged 2.5 days late. The monitors also observed 15 PCHs, all of which were timely. Therefore, 110/114 total PCHs were timely (**96%**).

The monitors observed three DCs conduct the hearings. Two DCs conducted independent disability/ADA assessments with the parolee after reviewing the BPH 1073 and DEC information at the inception of the hearing (asking questions about mental health status, mobility, vision, reading, education, medications, among other factors). The third DC did not ask parolees any questions in an attempt to conduct an independent ADA assessment unless the 1073 or DEC revealed the existence of a disability. The DC explained that his experience enables him to gauge whether a parolee will require accommodation through natural interaction. He also relies on defense counsel to raise any ADA or accommodation concerns at the beginning of the hearing. Accommodations were offered and/or provided for all parolees who reported a need or whose records revealed a need. Several parolees had their own reading glasses with them. The monitors also observed at least four instances where correctional officers escorted parolees to and from hearing rooms in wheelchairs (the officers provided the parolees assistance and did not make them maneuver the wheelchairs themselves).

Only one DC specifically reviewed the charges with the parolee before hearing evidence. In several instances the monitors did not know what the full set of charges were until the hearing ended and the RSTS paperwork was provided. All three DCs allowed the parolee and defense counsel to present evidence in defense and mitigation to the charges. After the evidence was heard only one DC verbally made an announcement of probable cause for each charge. All three DCs took mitigating evidence into consideration when negotiating the final dispositional offer and more favorable offers were extended to several parolees as a result.

Parolees who elected to reject the final PCH offer in favor of a full revocation were allowed to complete the paperwork necessary to subpoena witnesses.

The revocation packets reviewed prior to the tour revealed an interesting case that exemplifies BPH's adherence to applicable law pertaining to due process and conditions of parole. Parolee Gonzales (F08600) was charged with association with a prohibited person (he had a special condition not to associate with a certain woman). The DC dismissed the charge, citing the *Lent* decision as the basis for his ruling. The DC reasoned that the special conditions, signed by the parolee, do not provide a specific reason for the no-contact provision and that the parolee's criminal and parole history indicate no reason why the parolee should not be allowed to maintain contact with this specific person. The charge was dismissed.

Evidentiary Basis for Probable Cause Finding Documented by Deputy Commissioner

The DCs did not adequately document the evidentiary basis for their probable cause finding in 29/98 (30%) of the cases reviewed prior to the tour. (**Exhibits 1-B & 11**). Furthermore, the DCs did not adequately document the evidentiary basis for their probable cause finding in three of the cases observed. (**Exhibit 12**). For example, parolee Black (E95084) faced six charges. The DC found probable cause, stating "[Probable cause] established on all charges at PCH. Parolee claims he completed court and all charges were dismissed. Parolee claims he was not involved in the assault or the robbery. There are several witnesses in this case that claim parolee is responsible for the robbery and assault." This statement does not provide any evidence to support a probable cause finding for each of the six alleged charges. Three of the charges were absconding, pimping, and contributing to the delinquency of a minor. However, there was no discussing concerning those charges during the hearing nor did the DC document the evidence he found sufficient to make a probable cause finding in the RSTS documents. Conversely, the RSTS paperwork for parolee White's (V79050) case provides an example of excellent documentation regarding the probable cause findings. The parolee was charged with use of alcohol and being drunk in public. The DC recorded that probable cause was established based on Roseville PD report that indicates that parolee was observed face down in the street. When officers made contact with him, they could smell alcohol. He was also unable to walk without falling down. This statement indicates the source of the evidence and the actual evidence (smelling of alcohol, unable to walk, was observed face down) that supports a finding of probable cause on both charges.

A review of the revocation packets did not reveal any additional compliance deficiencies that require corrective action at this time.

X. Revocation Hearing

No revocation hearings were scheduled to occur during the tour. The monitors reviewed 14 cases prior to the tour that proceeded to a revocation hearing and Exhibit 1-A shows that 13 (98%) were held no later than 35 calendar days since the parole hold was placed. The late case was for parolee Maravilla (K39802). His hold date was 11/2/08 and the no later than date for the revocation hearing was 12/8/08. The final revocation hearing eventually occurred on 12/19/08 (the 46th business day). However, a review of the case reveals that a timely revocation hearing was scheduled for 12/8/08, but was postponed because the agent of record was not present (a substitute agent was present). According to the BPH 1103-REV, defense counsel objected to any statements made by the substitute agent because he was not the agent of record. The case originated out of Auburn but defense counsel and the state had agreed to have the case heard at

DVI so the arresting officer could attend. When the agent of record discovered that the two charges requiring the police officer's presence had been dismissed prior to the hearing, she no longer requested that the police officer be present to testify. However, the hearing was not rescheduled in Auburn and was set to still occur at DVI. The DC postponed the 12/8/08 hearing for cause and ordered that it be rescheduled to occur in Auburn. It does not appear that the failure of the parole agent to attend constituted good cause for the postponement in this case. The agent of record was aware that the hearing was scheduled at DVI and the decision that the arresting officer was no longer needed does not dispense of the requirement that the parole agent be present as was previously agreed to.

The monitors reviewed three randomly selected revocation hearings tapes for cases heard by three different DCs at DVI in December 2008. Impressively, all aspects of the hearings met the requirements of the Injunction. The DCs conducted comprehensive ADA reviews utilizing DEC, the BPH 1073, and completed an interactive ADA assessment with the parolee. The DCs also specifically reviewed the parolee's right to an impartial hearing officer and the appeal process. All three reviewed the charges. All three heard evidence and allowed testimony by both the state and the parolee, and announced their ultimate good cause findings. The monitors did not note any deficiencies in the hearing process for any of the cases reviewed. A summary of each case is as follows:

1) Rodriguez (J05805)- The parolee was charged with use of methamphetamine, failure to follow instructions, and failure to register per H&S 11590. The parolee openly admitted to all charges with some explanation. The parolee's only reason for proceeding to a revocation hearing was his desire for a drug program. The DC determined a program was inappropriate because the parolee had just been discharged from Proposition 36 due to excessive absences and had already been given the chance to avail himself to the STAR program. The DC also noted that DAPO had tried to work with the parolee while under supervision but the parolee did not take advantage of any assistance. The AOR testified that he has tried to assist the parolee to find treatment in the community but the parolee did not take the provision of any such assistance seriously. Based on the parolee's failure to take recovery seriously in the recent past, the DC ordered a 5E return to custody with an added special condition of parole to complete a drug treatment program upon his release.

2) Maldonado (F72500)- The parolee required the use of a wheelchair for the hearing and was provided one. He was charged with vandalism, use of alcohol, and violating a curfew special condition of parole. The parolee admitted to use of alcohol and vandalism, but challenged the curfew violation. The parole agent ran the parameters for GPS during the time in which the parolee was alleged to have violated curfew and determined that the GPS tracking shows that the parolee was in compliance with his curfew. The DC dismissed the charge. The parolee then presented one character witness, a church elder, who testified that the parolee had recently begun attending Alcoholics Anonymous meetings and did not view him as a violent person or a threat. The parolee also submitted a letter from the owner of the hotel the parolee vandalized explaining that the parolee had already paid for the damages to the hotel, which was considered in mitigation. Ultimately, the parolee was assessed a 10E return to custody.

3) Hull (F86287)- The parolee represented himself pro se. He was charged with failure to follow instructions, possession of a controlled substance, use of cocaine. The possession of a controlled substance charge was amended to possession of cocaine. The parolee objected that the DC hearing the case could not be fair and impartial because she presided over his PCH, the PCH paperwork states the parolee had a chance to discuss the matter at the PCH, and he now claims that he did not discuss the matter at the PCH. The objection was overruled. Evidence was presented by the state to support all charges. The DC amended the failure to follow instructions to failure to report as it more accurately reflected the parolee's behavior and good cause was found based on the parole agent's testimony. Good cause was found on use of cocaine pursuant to a positive lab result. The parolee objected to finding good cause on the possession charge because the final Department of Justice lab results were not included as part of the revocation packet (it appears the final lab results were not yet available to any party). The DC utilized the police drug analysis report, which was included in the revocation packet, as the basis for the good cause finding. The report indicates that an initial field test was run on the substance found on the parolee which was positive for cocaine. The parolee was assessed a 9E return to custody.

XI. Remedial Sanctions

According to RSTS, in the month of December 2008 DAPO gave parolee a remedial sanction (for non-mandatory referrals) or recommended that the parolee be given a remedial sanction by the BPH in 48% of cases at the PCD step, 52% at the Refer step and 13% at the Par Ad step. **(Exhibit 13)**. Additionally, the BPH recommended or gave a remedial sanction in 10% of cases at the RTCA step, and ordered a remedial sanction in 15% of PCHs and 9% of revocation hearings. *Id.* According to the "Closed Case Remedial Sanctions Summary" for December 2008, the BPH approved 35 parolees for the ICDTP, four were ordered to a Day Reporting Center, six were ordered to the STAR program, and four were ordered to another program, as remedial sanctions. **(Exhibit 14)**.

The monitors observed several probable cause hearings in which ICDTP was recommended by DAPO/BPH or requested by the parolee. Two parolees who were medically clear were approved for the jail-based program at their hearing. However, there were others who were recommended for ICDTP but were not approved because they had mental health or medical conditions that could not be serviced by the jail-based programs. When the DCs learned that the parolee's condition(s) precluded placement in the jail program there was no further discussion of using a community-based program that can better facilitate medical/medication/mental health needs, or of utilizing the county-to-county transfer policy. These parolees were simply denied a remedial sanction.

BPH staff reported several issues associated with the ICDTP, which are discussed in the bullets below:

- The DRU makes a daily placement list of parolees who accepted ICDTP. The jail-based ICDTP lists are then sent to Case Records, the jail, and the Transportation Division. It appears that the jail and Transportation use the list provided by the DRU; the jail uses it to track who to expect as an incoming ICDTP placement and Transportation uses it to create their transport lists. However, it appears that Case Records makes changes to the list after the medical clearances and warrant checks (among other Case Records functions) occur, eliminating parolees who cannot be released to the program.

Transportation and the jail are not notified of these changes. This results in the loss of usable transportation slots when a bus is scheduled to pick up a certain number of parolees but fewer have been cleared for release. Similarly, this causes the jail to hold beds open for parolees who are no going to be released to the program.

- There is also a problem correctly identifying which program can accept which parolees. For example, the available jail programs have different exclusionary criteria. It appears that DAPO and BPH staff have not been provided updated information to inform of the exclusionary criteria associated with each jail program. DRU staff provided examples of cases where the parolee arrives at the jail but the jail won't take him because he does not meet their criteria. DRU staff also presented examples where a parolee is sent to one ICDTP and the program is full so they are directed to another program but, upon arrival at the new program it is determine the parolee does not meet that admission criteria.
- At the RTCA step, Deputy Commissioners are noting a parolee's CCCMS/EOP status and then make a recommendation to consider the jail-ICDTP. This inherently does not work because most jail programs do not accept parolees on medications or those in need of elevated mental health services. If a parolee's mental health or ADA issues prevent them access to the jail ICDTP it does not seem prudent for a Deputy Commissioner to make such a recommendation. In order to remedy this DARS is creating a matrix that shows the exact exclusionary criteria for each jail-based ICDTP. Better information regarding the exclusionary criteria for all programs will enable Deputy Commissioners to make more informed decisions.
- The monitors observed several hearings in which the parolee, despite CCCMS/EOP or medication status, was recommended for the jail ICDTP. It was quickly determined that they could not go because of their status, but there was no verbal consideration of using the community ICDTP, county transfer policy, or any other remedial sanction programs.
- The DRU reported that many ICDTP rejects (who arrive at the program and are then rejected) come as a result of ineligibility that was clearly knowable at the time the parolee accepted placement.

XII. Mentally Ill Parolees

Neither DRU staff nor CalPAP reported any problems associated with the interim process for handling cases in which the parolee appears unable to participate in the revocation process due to mental illness. CalPAP's regular tracking reports reveal that ongoing status checks are occurring and that parolees are scheduled for hearings they have stabilized and are able to participate in the process.

The monitors observed the probable cause hearing for parolee Rogers (F71067), who is CCCMS and has several medical issues (lower body pain, seizures, vision problems). At the PCH (held on 1/13/09) the parolee reported that he had still not seen a doctor or received his medications, including psychotropic medications. When the hearing concluded, medical staff at DVI was immediately notified of the parolee's need to see a doctor/clinician. DVI medical staff

confirmed that the parolee was seen by a doctor at San Quentin on 12/31/08 and given a complete disability evaluation, prior to his transfer to DVI. Once he arrived at DVI he was also screened by a nurse, who verified that his medications had been ordered. The parolee was also scheduled to see a doctor at DVI on 1/13/09 for additional follow-up. It appears the parolee's claims were not true- he has been seen medical staff at least twice and his medications were ordered as soon as he was evaluated at San Quentin.

XIII. Staffing Levels

BPH:

BPH did not report any staffing vacancies at DVI.

DAPO:

The DAPO Supervising Notice Agent reported he is currently has 3 FUNA/DRUNA vacancies. Current notice agents are covering the vacant areas, increasing their responsibility to a larger geographical area, continued vacancies could eventually impact notice agents ability to meet the Valdivia time frames. There is no time frame for filling the vacant positions at this time.

The Modesto 1 & 2 Parole Unit reported they have a full complement of agents and support staff. There were no reported problems relative to staff issues that would effect meeting the Valdivia time frames.

XIV. Revocation Extension

Staff from the Office of Court Compliance interviewed the Classification and Parole Representative (C&PR), two Office Technicians (OT) and a Correctional Counselor I (CCI) at DVI regarding the revocation extension process. All staff interviewed understood the *Valdivia* process but expressed a need for more training for all staff involved in the process.

At DVI, the OT receives the CDC 804 and a copy of the CDC115 from Case Records staff, then puts the packet together and delivers it to the C&PR along with the inmate's Central file. The C&PR reviews the file and all documents, initiates the case in RSTS, checks DEC, completes section I of the BPH 1073 and returns the packet to the OT, who confirms that all documents are present. The case is then assigned to a CCI for notice by placing the packet in the CCI's mailbox. The OT ensures receipt by following up with the CCI telephonically.

The OCC reviewed the RSTS "Closed Case Revocation Extension Summary" for DVI between December 1, 2008 and December 30, 2008. (**Exhibit 15**). RSTS indicates that there were eight cases processed in the month of December; however, a previously closed case was reactivated to correct an administrative error. There was no action taken that changed the disposition or required notification to the parolee of substantive issues. Therefore, only seven revocation extension cases were reviewed for this report.

Timeliness of receipt of CDC 804 and CDC 115 - Only one case was processed late at this step and it was four days late.

Timeliness of the C&PR Review - Of the seven cases, three were late at this step. One case was two days late, one case was four days late and one case was five days late. RSTS indicates that the CDC 804 was received at Case Records timely in two of the cases while the third case was already late by the time the C&PR received it.

Timeliness of Notice of Rights - 5/7 cases were late at this step. Three cases were two days late and two cases were four days late. In one late case the CCI received the case and served the parolee notice on the same day. (Wright, T66273). **(Exhibit 15)**. In two cases, the case was timely until it was received by the CCI for the notice but the CCI did not complete the notice until three days later, causing both to be late at this step. Both cases were for (Clem, F15279). **(Exhibit 15)**. Both cases were brought back into compliance at the next step and remained timely throughout the remainder of the process. It appears that CCIs do not make consistent entries into RSTS at the notice step to document that the parolee was served. In addition, there is nothing in the existing policies that makes this a requirement. The OCC will look into this more closely and attempt to rectify this problem so that there are lines of responsibility concerning RSTS data entry.

Timeliness of Revocation Extension packets referred to the BPH - 2/7 cases were processed late at this step. One case was one day late while the other was three days late.

Timeliness of attorney appointment - 1/7 case was late at this step; however, there are no dates entered into RSTS to determine the date on which an attorney was appointed. It is possible that this case was timely. The OCC will work with the RSTS team to look into the gaps in data collection and data entry for some sort of resolution (in order to determine whether CDCR staff is not entering the necessary tracking information into RSTS or whether RSTS itself requires modification in order to accurately report timeliness).

Timeliness of attorney Consultation - There were seven cases processed at this step and RSTS indicates that two cases were late; however, there are no dates entered into RSTS to determine the date on which the attorney consultation occurred. It is possible that both were timely. The OCC will work with the RSTS team to look into the gaps in data collection for some kind of resolution (in order to determine whether CDCR staff is not entering the necessary tracking information into RSTS or whether RSTS itself requires modification in order to accurately report timeliness).

Timeliness of Probable Cause Hearing - Only one case was processed late and it was already past the PCH time constraint at the time the notice occurred. The discovery date was 11/4/08 but RSTS indicates the CDC 804 was not received at Case Records until 11/12/08. Nonetheless, the PCH occurred on 12/03/08, 18 business days after the discovery date. The case was dismissed for violation of timeframes during the PCH hearing for (Wright, T66273). **(Exhibit 15)**.

Timeliness of Revocation Extension Hearing - There were no cases processed at this step.